



GARY R. HERBERT  
Governor

GREG BELL  
Lieutenant Governor

# State of Utah

## DEPARTMENT OF NATURAL RESOURCES

MICHAEL R. STYLER  
Executive Director

### Division of Water Rights

KENT L. JONES  
State Engineer/Division Director

January 8, 2013

#### Notom Water Users:

We have received ongoing inquiries regarding water right ownership in the Notom area and, subsequently, the division of the water. Unfortunately, title issues cannot always be resolved by our office since we are not the office of record for title, and therefore, have incomplete information. We have, however, researched our records and believe that the information provided in this letter will be an excellent start toward resolving title issues. In this letter we also address some of the distribution issues and provide suggestions for resolving them.

The water rights in the Notom Area were surveyed by our office in the 1950's as part of the Colorado River Drainage Area Adjudication. At that time a total of 253.04 acres were identified as being irrigated from Pleasant Creek (PC) at a maximum flow rate of 6.3 cfs. Supplemental water rights included 1.0 cfs of Oak Creek (OC) water and 0.1 cfs from Southwest Notom Wash (SWNW). The irrigation water rights in the Notom area identified in the adjudication are summarized in the following table:

| Owner  | Portion of Flow | Acreage   | Group Number:<br>Group Acreage                                      | Water Sources and<br>Water Right Numbers       |
|--|-----------------|-----------|---|--|
| Joseph Golden and<br>Esther Coombs Durfey      | 27/125          | 53.77 ac  | 618349: 45.47 ac <sup>1</sup><br>618350: 5.00 ac<br>618588: 3.3 ac  | PC: 95-9, 11, 190<br>OC: 95-15<br>SWNW: 95-10  |
| George Lawrence and<br>Clea King Durfey        | 44/125          | 89.74 ac  | 618361: 20.43 ac<br>630175: 68.8 ac <sup>2</sup><br>618362: 0.51 ac | PC: 95-12, 14, 191<br>OC: 95-98<br>SWNW: 95-13 |
| Joseph Golden Durfey<br>(1/2 interest in uses) | 27/125          | 109.53 ac | 618450: 62.47 ac<br>618451: 47.06 ac                                | PC: 95-17, 189<br>OC: 95-16<br>SWNW: 95-19     |
| Orlo Durfey<br>(1/2 interest in uses)          | 27/125          |           |   | PC: 95-18, 29<br>OC: 95-97<br>SWNW: 95-20      |
| TOTAL ACREAGE                                  |                 | 253.04 ac |   |  |

In the 50-plus years since this adjudication work has been done, much, if not all, of the land and water rights have been conveyed to subsequent owners. Some of the land and water rights have been conveyed multiple times and separated into numerous smaller pieces. The

<sup>1</sup> The Proposed determination shows 48.77 ac. However 0.42 ac in the SE $\frac{1}{4}$ SE $\frac{1}{4}$  and 2.88 ac in the SW $\frac{1}{4}$ SE $\frac{1}{4}$  Sec. 11 30S 7E are duplicated in a subsequent group of water rights (Group Number 618588) and are thus removed from this group.

<sup>2</sup> The Proposed Determination shows 69.31 ac. However, the 0.51 ac in the NE $\frac{1}{4}$ NE $\frac{1}{4}$  Sec. 2 30S 7E is duplicated in a subsequent group of water rights (Group Number 618362) and is thus removed from this group.



official office of record for all of these title transfers is the County Recorder's Office. From time to time, Reports of Conveyance (ROC's) are submitted to our office showing title changes to water rights, and our water right ownership records are updated accordingly. However, our records cannot be considered to be the official record, or even a complete record, since there are many conveyances that are not reported to our office. Our ownership records are also dependent upon the work submitted by the title professionals submitting the ROC's.

In order to definitively determine water right ownership for all of the Notom water rights, a private title professional would need to be consulted with. The title professional would need to do a comprehensive search at the county recorder's office to identify all relevant deeds. The professional would then need to trace the chain of title of each of the water rights in the previous table, taking care to note when water passed by appurtenance with the land, and also when water rights were severed from the land. The professional would also need to examine information in our office submitted with ROC's and resolve any discrepancies encountered in the various records. Considering the number of water rights and number of deeds involved this could be a time consuming process.

Consulting with a title professional could potentially be costly, but it may prove to be well worth the expense over the long term. Another step that may prove beneficial in the long term would be the formation of an irrigation company. In forming an irrigation company, all of the underlying rights would have to be deeded to the company which, in turn, would issue shares to each person in proportion to the amount of water deeded to the company. There are several benefits that could be realized by the formation of a company such as:

- 1) Flexibility in place of use. Shares in a company may be transferred, either temporarily or permanently, and used within the service area of the company without having to file a change in place of use or a subsequent proof of beneficial use.
- 2) Conveyance of shares of stock is simpler. Ownership transfers of shares of stock don't require a title professional. Additionally, many of the pitfalls of ownership transfer associated with deeds and land appurtenance can be avoided.
- 3) Shared costs of operation. It is often more efficient to pay for operational costs such as maintenance and distribution expenses through an irrigation company.

We have done some preliminary work in overlaying current land ownership with both of the following:

- 1) Recently surveyed, irrigated acreage. The current land boundaries and irrigated acreage were provided to us by Torgersen Engineering (TE).
- 2) The irrigated acreage identified on the hydrographic survey maps (HSM's). This is the legal place of use for the water rights in the Notom area.

The attached table shows an estimate of the number of surveyed acres (both as identified in the HSM's and by TE) that fall within current ownership boundaries. This table does not necessarily represent current ownership of the water rights since some of the water rights may have been severed from the land in the deeds conveying the land or water. This information, particularly the information related to the HSM's, should be beneficial in determining water rights title.

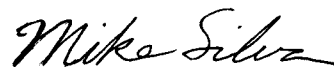
You will note from the table that a total of 265.72 acres of irrigation were recently surveyed, compared to 253.04 acres of legal irrigation established in the adjudication. This indicates that irrigation has been occurring outside the approved place of use. For example, it was found that federal (BLM) lands were being irrigated counter to the water rights. In total, irrigation exceeds the water rights by about 5%. On an individual basis, there are some who are exceeding their legal acreage. There may also be some who are irrigating less land than they have a right to. A title professional would need to sort out the ownership, as described previously, in order to determine who is exceeding their legal acreage and who may be under. If water users desire to change the place of use from what is identified in the HSM's, then a change application needs to be filed with and approved by this office. Acreage irrigated contrary to the defined water rights may be subject to enforcement proceedings by this office.

The Lower Fremont River Commissioner's duty is to deliver 6.3 CFS to the Notom Ditch when it is available. But she does not have responsibility to distribute water in the Notom Ditch beyond the measuring device. The water users are responsible for the equitable division of the water once it is in the ditch. Ultimately, this may be best accomplished by installing splitters. Since the water supply is variable over the year and the water division is on a percentage basis, splitters would ensure that everyone shared shortages fairly.

The Division is considering consolidating the Notom distribution accounts into a single account and billing under a single assessment. As mentioned earlier, the formation of an irrigation company would facilitate collections of this assessment as well as providing several other advantages.

Division staff will be available to meet with the Notom Water Users at about 4:00 p.m., which is directly after the Lower Fremont River Annual Distribution Meeting scheduled for 3:00 p.m. on February 6, 2013. We expect to be able to discuss some of the issues in more detail and answer questions at that time. Until then, if you have any questions concerning the items discussed in this letter, please provide such in writing to the division's address shown in the letter head, or by e-mail to MikeSilva@utah.gov.

Respectfully,



Mike Silva  
Distribution Engineer

Enclosure: HSM-Surveyed Acreage in Notom (2 pages)

cc:

Lower Fremont River Distribution File  
Kirk Forbush, Regional Engineer

Becky Taft, River Commissioner  
PO Box 154  
Bicknell, UT 84715

Rod Torgersen  
Torgersen Engineering  
180 N. 100 E. Suite N  
Richfield, UT 84701

Durfey Family Trust  
Kay F. Durfey, Trustee  
PO Box 116  
Bicknell, UT 84715

Chad and Roma Roderick  
PO Box 33  
Bicknell, UT 84715

Boone Karl and Marjie Taylor  
P.O. Box 55  
Bicknell, Utah 84715

David A. Hart, Robyn Russell  
PO Box 750241  
Torrey UT 84775

Mark S. and Chrisann A. Hawley  
PO Box 73  
Toquerville UT 84774

Edward Lachman  
1406 1/2 Havenhurst Drive  
Los Angeles CA 90046-3815

Edward Lachman  
43 East 19th Street  
New York NY 10003-1337

Edward Lachman  
c/o Cathy Bagley  
Boulder Mountain Realty  
PO Box 75009  
Torrey, UT 84775

Christopher Marabetta and Abbie Lewis  
PO Box 750193  
Torrey UT 84775-0193

Christopher Marabetta,  
4302 Vista Way  
Fairbanks, Alaska 99709-2021

Robert E. and Becky Lewis  
516 14th Avenue  
Salt Lake City UT 84103

Robert Jensen Land Holdings, LLC  
1148 East Charlton Avenue  
Salt Lake City UT 84106

Larry E. Walker , Carol Lee Jones  
PO Box 70509  
West Valley UT 84170

Strikwerda Family Trust  
1926 East Mission Road  
Fallbrook, CA 92028-1836

J McLean and Judy S. Durfey  
HC 70 Box 135  
Torrey, UT 84775-9606

McLean Durfey  
P.O. Box 741  
Aztec, New Mexico 87410

Darin Durfey  
279 S 1000 E  
Santaquin, UT 84655

Elane & Ross Davis  
1040 E 900 S Unit 24  
St. George, UT 84790-2046

Voris & Marie Stevens  
Loa, UT 84747

Allen & Connie Durfey  
Bicknell, UT 84715

Motorsports Properties, LLC  
a Virginia limited liability company  
PO Box 1139  
Dumfries VA 22026

Michael A and Kathleen Blain  
2722 S 800 E  
Salt Lake City, UT 84106-1749

# **SURVEYED ACREAGE IN NOTOM - PRELIMINARY DATA**

TE = Torgersen Engineering

HSM = Hydrographic Survey Maps

| <u>Owner</u>   |                 | <u>Section</u> | <u>QtrQtr</u> | <u>Surveyed Acreage</u> |                  |  |
|--|-----------------|----------------|---------------|-------------------------|------------------|--|
|  |                 |                | <u>TE</u>     | <u>HSM</u>              | <u>WR Group#</u> |  |
| Boone Karl Taylor & Marjie Taylor<br>Parcel # 0-973  | T30S R7E Sec 01 | NESW           | 3.63          | 3.55                    | 618450           |  |
|  |                 | NWSW           | 23.16         | 22.09                   | 618451           |  |
|  |                 |                | 0.00          | 1.10                    | 618450           |  |
|  |                 | SESW           | 7.87          | 8.80                    | 618451           |  |
|  |                 | SWNW           | 18.17         | 19.18                   | 618451           |  |
|  |                 | SWSW           | 5.37          | 4.59                    | 618451           |  |
|  |                 |                | 1.30          | 618450                  |                  |  |
|  |                 |                | 58.20         | 60.61                   |                  |  |
|  |                 |                |               |                         |                  |  |
| Carol Lee Jones<br>Parcel No. 0-977, 0-977-1, 0-977-2  | T30S R7E Sec 11 | NENE           | 16.04         | 17.40                   | 630175           |  |
|  |                 | SENE           | 5.36          | 5.77                    | 630175           |  |
|  |                 |                | 21.40         | 23.17                   |                  |  |
|  |                 |                |               |                         |                  |  |
| Chad L. & Roma D. Roderick<br>Parcel Nos. 0-974-2, 0-973-6, 0-983,<br>0-974-1  | T30S R7E Sec 01 | SWSW           | 1.85          | 2.26                    | 618450           |  |
|  | T30S R7E Sec 02 | NENE           | 2.01          | 1.95                    | 618349           |  |
|  |                 | SENE           | 0.00          | 1.90                    | 618349           |  |
|  |                 | SESE           | 3.41          | 4.00                    | 618349           |  |
|  | T30S R7E Sec 11 | NENE           | 0.01          | 0.00                    |                  |  |
|  | T30S R7E Sec 12 | NWNW           | 0.52          | 0.60                    | 618450           |  |
|  |                 |                | 7.80          | 10.71                   |                  |  |
|  |                 |                |               |                         |                  |  |
| Christopher & Abbie Lewis Marabetta<br>Parcel No. 0-975-7  | T30S R7E Sec 02 | SESE           | 6.20          | 6.09                    | 630175           |  |
|  |                 |                | 6.20          | 6.09                    |                  |  |
|  |                 |                |               |                         |                  |  |
| Edward Lachman<br>Parcel Nos. 0-931, 0-975, 0-975-8,<br>0-975-9, 0-975-10, 0-975-11,<br>0-975-12, 0-975-13, 0-975-14 | T30S R7E Sec 02 | NENE           | 0.16          | 0.51                    | 618362           |  |
|  |                 | NWNE           | 0.17          | 0.00                    |                  |  |
|  |                 | NESE           | 14.34         | 20.23                   | 630175           |  |
|  |                 | SENE           | 0.00          | 4.40                    | 630175           |  |
|  |                 | SESE           | 14.08         | 13.63                   | 630175           |  |
|  |                 |                | 28.75         | 38.77                   |                  |  |
|  |                 |                |               |                         |                  |  |
| J McLean & Judith S. Durfey<br>Parcel No. 0-979-2, 0-980-2, 0-981-1  | T30S R7E Sec 11 | NESE           | 4.74          | 3.55                    | 618349           |  |
|  |                 | SESE           | 7.07          | 0.59                    | 618349           |  |
|  | T30S R7E Sec 12 | NENW           | 0.88          | 0.04                    | 618450           |  |
|  |                 | NWNW           | 0.10          | 0.11                    | 618450           |  |
|  |                 | NWSW           | 6.65          | 4.40                    | 618349           |  |
|  |                 | SENW           | 4.93          | 2.79                    | 618450           |  |
|  |                 | SWNW           | 12.82         | 11.22                   | 618450           |  |
|  |                 |                | 37.20         | 22.70                   |                  |  |

| <u>Owner</u>  | <u>Section</u>  | <u>QtrQtr</u> | <u>TE</u> | <u>HSM</u> | <u>Group#</u> |
|---|-----------------|---------------|-----------|------------|---------------|
| Durfey Family Trust<br>Parcel Nos. 0-934, 0-973-1, 0-974,<br>0-976, 0-980 | T29S R7E Sec 35 | NWNE          | 3.50      | 3.64       | 618361        |
|   |                 | NWSE          | 0.88      | 1.20       | 618350        |
|   |                 | SESE          | 1.24      | 0.42       | 618588        |
|   |                 | SWNE          | 11.18     | 11.17      | 618361        |
|   |                 | SWSE          | 4.55      | 2.88       | 618588        |
|   | T30S R7E Sec 01 | SWSW          | 3.57      | 6.25       | 618450        |
|   | T30S R7E Sec 02 | NENE          | 0.03      | 0.00       |               |
|   |                 | NESE          | 0.00      | 0.16       | 630175        |
|   |                 | NESE          | 0.00      | 1.52       | 618349        |
|   |                 | SENE          | 0.00      | 0.04       | 630175        |
|   |                 | SESE          | 6.15      | 4.04       | 618349        |
|   | T30S R7E Sec 11 | NENE          | 14.12     | 14.13      | 618349        |
|   |                 | NESE          | 4.49      | 0.00       |               |
|   |                 | SENE          | 12.72     | 9.39       | 618349        |
|   | T30S R7E Sec 12 | NENW          | 0.04      | 0.00       |               |
|   |                 | NWNW          | 14.74     | 12.89      | 618450        |
|   |                 | SWNW          | 12.58     | 11.21      | 618450        |
|   |                 |               | 89.80     | 78.94      |               |

|  |                 |      |      |      |        |
|--|-----------------|------|------|------|--------|
| Mark S. & Chrisann A. Hawley<br>Parcel No. 0-977-3 | T30S R7E Sec 11 | SENE | 0.80 | 0.66 | 630175 |
|  |                 |      | 0.80 | 0.66 |        |

|   |                 |      |      |      |        |
|---|-----------------|------|------|------|--------|
| Michael A. & Kathleen Blain<br>Parcel No. 0-978 | T30S R7E Sec 01 | SWSW | 0.10 | 0.50 | 618451 |
|   |                 |      |      | 0.35 | 618450 |
|   |                 |      |      |      | 0.10   |

|  |                 |      |       |      |        |
|--|-----------------|------|-------|------|--------|
| Robert Jensen Land Holdings LLC<br>Parcel No. 0-935-1, 0-982 | T29S R7E Sec 35 | NESW | 0.72  | 1.23 | 618361 |
|  |                 | NWSE | 6.54  | 4.39 | 618361 |
|  |                 |      | 0.00  | 3.80 | 618350 |
|  | T30S R7E Sec 12 | NWSW | 3.24  | 0.42 | 630175 |
|  |                 |      | 10.50 | 9.84 |        |

|  |                 |      |      |      |        |
|--|-----------------|------|------|------|--------|
| Stevens, Davis, Durfey<br>Parcel No. 0-973-2 | T30S R7E Sec 01 | SWNW | 0.00 | 0.70 | 618451 |
|  |                 |      | 0.00 | 0.70 |        |

|                          |                 |      |      |      |  |
|--------------------------|-----------------|------|------|------|--|
| Bureau of Land Mangament | T30S R7E Sec 12 | SWSW | 4.75 | 0.00 |  |
|                          | T30S R7E Sec 14 | NENE | 0.22 | 0.00 |  |
|                          |                 |      | 4.97 | 0.00 |  |

TOTAL SURVEYED ACREAGE

265.72 253.04